

ASSEMBLY BILL

No. 948

Introduced by Assembly Member Oropeza

February 18, 2005

An act to amend Section 20209.7 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 948, as introduced, Oropeza. Design-build and transit operators.

Existing law authorizes a transit operator, as defined, to utilize the design-build method of procurement for transit projects, as defined. Existing law requires a transit operator to prepare a set of documents to describe a project that will be let to a design-build entity, but does not identify any specifically required document. Existing law requires a transit operator that undertakes a design-build project to establish a labor compliance program, as defined. Existing law prohibits a transit operator from utilizing the design-build method of procurement for a rail project, unless that project costs more than \$50,000,000.

This bill would specify that a transit operator is required to establish a labor compliance program only for a design-build contract and only if the transit operator does not already have a labor compliance program, as specified. This bill would also change the prohibition regarding design-build rail projects to instead prohibit a transit operator from utilizing the design-build method of procurement for a capital maintenance or capacity-enhancing rail project, unless that project costs more than \$3,000,000. This bill would also require a transit operator to prepare specific documents regarding a project that will be let to a design-build entity.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20209.7 of the Public Contract Code is
2 amended to read:
- 3 20209.7. Design-build projects shall progress in a three-step
4 process, as follows:
- 5 (a) The transit operator shall prepare a set of documents
6 setting forth the scope of the project. The documents ~~may~~ *shall*
7 include, but are not limited to, the size, type, and desired design
8 character of the buildings, transit facilities, and site, performance
9 specifications covering the quality of materials, equipment, and
10 workmanship, preliminary plans or building layouts, or any other
11 information deemed necessary to describe adequately the transit
12 operator's needs. The performance specifications and any plans
13 shall be prepared by a design professional duly licensed or
14 registered in California.
- 15 (b) Any architectural or engineering firm or individual
16 retained by the transit operator to assist in the development
17 criteria or preparation of the request for proposal ~~shall~~ *is not be*
18 eligible to participate in the competition ~~with~~ *for* the design-build
19 entity.
- 20 (c) ~~The~~ *If the transit operator does not already have a labor*
21 *compliance program, as defined in Section 1771.5 of the Labor*
22 *Code, the* transit operator shall establish and enforce a labor
23 compliance program *for the design-build contract* containing the
24 requirements outlined in Section 1771.5 of the Labor Code or
25 shall contract with a third party to operate ~~a~~ *this* labor compliance
26 program containing the requirements outlined in Section 1771.5
27 of the Labor Code. This requirement ~~shall not apply~~ *applies only*
28 *to the design-build contract and does not apply* to projects where
29 the transit operator or the design-build entity has entered into a
30 collective bargaining agreement that binds all of the contractors
31 performing work on the project, *or to any other project of the*
32 *transit operator that is not design-build.*
- 33 (d) (1) Each RFP shall identify the basic scope and needs of
34 the project or contract, the expected cost range, and other

1 information deemed necessary by the contracting agency to
2 inform interested parties of the contracting opportunity.

3 (2) Each RFP shall invite interested parties to submit
4 competitive sealed proposals in the manner prescribed by the
5 contracting agency.

6 (3) Each RFP shall include a section identifying and
7 describing:

8 (A) All significant factors that the agency reasonably expects
9 to consider in evaluating proposals, including cost or price and
10 all nonprice related factors.

11 (B) The methodology and rating or weighting ~~scheme~~ *process*
12 that will be used by the agency in evaluating competitive
13 proposals and specifically whether proposals will be rated
14 according to numeric or qualitative values.

15 (C) The relative importance or weight assigned to each of the
16 factors identified in the RFP. If a nonweighted system is used,
17 the agency shall specifically disclose whether all evaluation
18 factors other than cost or price, when combined, are any of the
19 following:

20 (i) Significantly more important than cost or price.

21 (ii) Approximately equal in importance to cost or price.

22 (iii) Significantly less important than cost or price.

23 (D) If the contracting agency wishes to reserve the right to
24 hold discussions or negotiations with offerors, it shall specify the
25 same in the RFP and shall publish separately or incorporate into
26 the RFP applicable rules and procedures to be observed by the
27 agency to ensure that any discussions or negotiations are
28 conducted in a fair and impartial manner.

29 (e) (1) The transit operator ~~shall~~ *may* establish a procedure to
30 prequalify design-build entities using a standard questionnaire
31 developed by the Director of Industrial Relations. The
32 standardized questionnaire may not require prospective bidders
33 to disclose any violations of Chapter 1 (commencing with
34 Section 1720) of Part 7 of Division 2 of the Labor Code
35 committed prior to January 1, 1998, if the violation was based on
36 a subcontractor's failure to comply with these provisions and the
37 bidder had no knowledge of the subcontractor's violations and
38 the bidder complied with the conditions set forth in subdivision
39 (b) of Section 1775 of the Labor Code. In preparing the
40 questionnaire, the director shall consult with the construction

1 industry, transit operators, and other affected parties. This
2 questionnaire shall require information including, but not limited
3 to, all of the following:

4 (A) A listing of all the contractors that are part of the
5 design-build entity.

6 (B) Evidence that the members of the design-build entity have
7 completed, or demonstrated the experience, competency,
8 capability, and capacity to complete, projects of similar size,
9 scope, or complexity, and that proposed key personnel have
10 sufficient experience and training to competently manage and
11 complete the design and construction of the project.

12 (C) The licenses, registrations, and credentials required to
13 design and construct the project, including information on the
14 revocation or suspension of any license, credential, or
15 registration.

16 (D) Evidence that establishes that the design-build entity has
17 the capacity to obtain all required payment and performance
18 bonding, liability insurance, and errors and omissions insurance,
19 as well as a financial statement that assures the transit operator
20 that the design-build entity has the capacity to complete the
21 project.

22 (E) Any prior serious or willful violation of the California
23 Occupational Safety and Health Act of 1973, contained in Part 1
24 (commencing with Section 6300) of Division 5 of the Labor
25 Code or the Federal Occupational Safety and Health Act of 1970
26 (P.L. 91-596), settled against any member of the design-build
27 entity, and information concerning a contractor member's
28 workers' compensation experience history and worker safety
29 program.

30 (F) Information concerning any debarment, disqualification, or
31 removal from a federal, state, or local government public works
32 project. Any instance where an entity, its owners, officers, or
33 managing employees submitted a bid on a public works project
34 and were found by an awarding body not to be a responsible
35 bidder.

36 (G) Any instance where the entity, its owner, officers, or
37 managing employees defaulted on a construction contract.

38 (H) Any violations of the Contractors' State License Law
39 (Chapter 9 (commencing with Section 7000) of Division 3 of the
40 Business and Professions Code), excluding alleged violations of

1 federal or state law, including the payment of wages, benefits,
2 apprenticeship requirements, or personal income tax withholding,
3 or of Federal Insurance Contribution Act (FICA) withholding
4 requirements settled against any member of the design-build
5 entity.

6 (I) Information concerning the bankruptcy or receivership of
7 any member of the entity, and information concerning all legal
8 claims, disputes, or lawsuits arising from any construction
9 project of any member of the entity during the past three years,
10 including information concerning any work completed by a
11 surety.

12 (J) If the design-build entity is a partnership, limited
13 partnership, or other association, a listing of all of the partners,
14 general partners, or association members who will participate as
15 subcontractors in the design-build contract.

16 ~~(K) Evidence that the members of the design-build entity have~~
17 ~~completed, or demonstrated the experience, competency,~~
18 ~~capability, and capacity to complete, projects of similar size,~~
19 ~~scope, or complexity, and that proposed key personnel have~~
20 ~~sufficient experience and training to competently manage and~~
21 ~~complete the design and construction of the project.~~

22 ~~(L)~~ Information concerning all settled adverse claims,
23 disputes, or lawsuits between the owner of a public works project
24 and any member of the design-build entity during the five-year
25 period immediately preceding submission of a bid pursuant to
26 this section, in which the claim, settlement, or judgment exceeds
27 fifty thousand dollars (\$50,000). Information shall also be
28 provided concerning any work completed by a surety during this
29 period.

30 ~~(M)~~

31 (L) In the case of a partnership or other association that is not
32 a legal entity, a copy of the agreement creating the partnership or
33 association and specifying that all partners or association
34 members agree to be liable for full performance under the
35 design-build contract.

36 (2) The information required pursuant to this subdivision shall
37 be verified under oath by the entity and its members in the
38 manner in which civil pleadings in civil actions are verified.
39 Information that is not a public record pursuant to the California
40 Public Records Act (Chapter 3.5 (commencing with Section

1 6250) of Division 7 of Title 1 of the Government Code) shall not
2 be open to public inspection.

3 (f) The transit operator shall establish a procedure for final
4 selection of the design-build entity. Selection shall be based on
5 either of the two following procedures, except that in no case
6 ~~may~~ shall the transit operator award a contract to a design-build
7 entity pursuant to this article for a *capital maintenance or*
8 *capacity-enhancing* rail project unless that project exceeds ~~fifty~~
9 ~~three million dollars (\$50,000,000)~~ (\$3,000,000) in cost:

10 (1) For projects with costs from ten million dollars
11 (\$10,000,000) to twenty million dollars (\$20,000,000), inclusive,
12 the contract shall be awarded to the lowest responsible bidder.

13 (2) For projects costing over twenty million dollars
14 (\$20,000,000), the transit operator may award the projects using
15 either the lowest responsible bidder or by best value.